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November 2, 1990

Cynthia Nadoiski, Esq.  
Office of Regional Counsel  
United States Environmental  
Protection Agency, Region III  
841 Chestnut Street  
Philadelphia, Pennsylvania 19107

*Rec'd.  
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Re: Palmerton, Pennsylvania Superfund Site - Cinder Bank ROD

Dear Cynthia:

Thank you for meeting with representatives of Zinc Corporation of America on Tuesday, October 23, 1990 to discuss the Cinder Bank Record of Decision. At the meeting, we asked about the various studies which have taken place since issuance of the ROD on June 29, 1988, including the Black and Veatch Report of August 7, 1989, the Office of Surface Mining Review of various fire control options dated April 26, 1990, and EPA's infrared aerial photography of the Cinder Bank

You told us that EPA has met with DER to discuss potential changes in the remedial action selected by the current ROD. We understand that DER may have some flexibility on slope grading requirements and fire quenching, but the Pennsylvania agency seems intransigent in its demand for an 18" soil/6" clay cap over the entire Cinder Bank. Apparently DER continues to maintain that this cap is a state ARAR arising out of its municipal waste landfill regulations.

We understand that EPA is seeking additional information in order to support a revised Record of Decision for the Cinder Bank. You told us the additional studies would be helpful in supporting EPA's decision to select a remedy which DER may not completely concur with. Specifically, you requested that (1) ZCA conduct air quality monitoring, both on-site and off-site, to

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determine quality and quantity of air emissions from the Cinder Bank; (2) ZCA agree to identify further areas of burning on the Cinder Bank during the design phase; (3) ZCA investigate further the feasibility of recycling materials in the Cinder Bank; (4) ZCA provide a grading plan to address both fire and non-fire areas; (5) ZCA model the rainwater infiltration effect on the Cinder Bank so as to compare the effectiveness of various capping alternatives.

Needless to say, our position remains that the remedy recommended by the feasibility study, consisting principally of soil amendments and revegetation and surface water diversion, meets all the requirements of CERCLA and need not be studied further to support it. DER is incorrect when it contends that its municipal waste regulations apply to the Cinder Bank simply because (before 1970) the Borough of Palmerton disposed of municipal waste there.

First, it is important to keep in mind that Pennsylvania's authority to seek a remedy more stringent than EPA would apply is limited to persuading EPA that the state criterion is an ARAR which should be incorporated in the remedy pursuant to §121 of CERCLA. State authority to impose a remedy outside of CERCLA is preempted. United States v. AKZO Coatings, 719 F.Supp. 571 (E.D. Michigan 1989)

The Pennsylvania municipal solid waste regulations, and particularly the cap requirements, are not ARARs for the Cinder Bank under CERCLA or the National Contingency Plan. ZCA has explained why in its comments previously submitted, but to summarize: the municipal waste regulations are not "applicable" because the disposal of municipal waste at the Cinder Bank stopped long before they became effective. Nor are the municipal landfill standards "relevant and appropriate", because disposal of municipal waste along with millions of tons of zinc smelter tailings, is completely dissimilar to the engineered municipal landfill contemplated by the Pennsylvania regulations. Furthermore, a capping system as recommended by DER is not suited to this particular site nor warranted in order to protect human health and the environment. ZCA, EPA and Black and Veatch have all concluded that the soil amendment and vegetation cover, combined with a certain amount of regrading and surface water

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diversion, is protective of health and the environment as required by CERCLA. Therefore, for these and other reasons, the state landfill regulations are not ARARs for this site and the soil clay cap system as set forth in the rules should not be required.<sup>1</sup>

With respect to the subterranean fires, U.S. Department of Interior has concluded that the vegetative cover is protective and that there is no need to either contain or quench the fires so long as there is no health threat from air emissions from the fire.

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1. DER has set forth in its municipal landfill regulations the performance objectives of the capping system:

"Final cover shall meet the following performance standards. Final cover shall:

- (1) Prevent vectors, odors, blowing litter and other nuisances.
- (2) Cover solid waste after it is placed without change in its properties and without regard to weather.
- (3) Be capable of allowing loaded vehicles to successfully maneuver over it after placement.
- (4) Be noncombustible.
- (5) Be capable of supporting the germination of propagation of vegetative cover as required by §§272.235 and 273.236 (relating to revegetation; and standards for successful revegetation).
- (6) Company well and not crack excessively when dry." 25 Pa. Code §273.234(c).

Both ZCA and Black and Veatch have concluded that the oil amendment/vegetation strategy will be effective and implementable to achieve the same goals at a much lower cost. Accordingly, even if the capping rule contained in the Pennsylvania municipal solid waste regulations were an ARAR it should be waived. See CERCLA §121(d)(4)(D).

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For these reasons, ZCA believes that additional study is not needed, because the record fully supports the remedy recommended by the feasibility study. Nevertheless, we understand EPA's position and want to cooperate. ZCA will evaluate each of the above requests, communicate with Tony Koller/Fran Burns in order to better define the specific objectives EPA may have in mind, and provide a response either in the form of a proposal to do the work, or a reason why we believe it is either not appropriate or cannot be done for technical reasons.

Very truly yours,

*J. F. Allen / J.F.*  
James F. Allen

JFA/llc

cc: Robert P. Marshall  
John Oyler  
John Carroll  
Walter Graham  
Tony Koller  
Fran Burns

P.S. Would you please provide us with copies of EPA's correspondence with Pennsylvania DER regarding the further studies and appropriate remedy for the Cinder Bank. We talked about these letters in our meeting, and it would be helpful for us to understand specifically DER's position. Thank you.

J.A.

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